

LAW OFFICES OF

KELLER ROHRBACK L.L.P.

LAURIE B. ASHTON ①⑤⑥⑦⑧
 IAN S. BIRK
 JAMES A. BLOOM ①⑦
 STEPHEN R. BOATWRIGHT ①⑦
 KAREN E. BOXX ⑥
 GRETCHEN FREEMAN CAPPIO
 T. DAVID COPLEY ③
 ALICIA M. CORBETT ①⑦
 ROB J. CRICHTON ①
 CHLOETHIEL W. DEWEESE
 MAUREEN M. FALECKI ④
 JULI FARRIS ④⑥
 RAYMOND J. FARROW
 ERIC J. FIERRO ①⑦
 GLEN P. GARRISON ⑥
 LAURA R. GERBER
 MATTHEW M. GEREND
 GARY A. GOTTO ②⑦⑧

BENJAMIN B. GOULD ②⑥⑦
 GARY D. GREENWALD ①⑥⑦
 MARK A. GRIFFIN ③
 AMY N.L. HANSON ①
 IRENE M. HECHT
 SCOTT C. HENDERSON
 MICHAEL G. HOWARD
 SHARON T. HRITZ ②⑦
 AMY E. HUGHES
 DEAN N. KAWAMOTO ②⑥⑦
 RON KILGARD ①⑥⑦⑧
 SUSAN A. KIM ④⑥
 SARAH H. KIMBERLY
 DAVID J. KO
 BENJAMIN J. LANTZ
 CARI CAMPEN LAUFENBERG
 ELIZABETH A. LELAND
 TANA LIN ⑦⑧⑨

DEREK W. LOESER
 RYAN McDEVITT
 JOHN MELLEN ⑦
 GRETCHEN S. OBRIST
 ROBERT S. OVER ④⑥
 AMY PHILLIPS
 DAVID S. PREMINGER ①⑦
 ERIN M. RILEY ①
 ISAAC RUIZ
 DAVID J. RUSSELL
 MARK D. SAMSON ①⑥⑦⑧
 LYNN LINCOLN SARKO ⑥⑧
 WILLIAM C. SMART
 THOMAS A. STERKEN
 KARIN B. SWOPE
 HAVILA C. UNREIN
 MARGARET E. WETHERALD ②
 HARRY WILLIAMS, IV ①

AMY WILLIAMS-DERRY
 MICHAEL WOERNER
 BENSON D. WONG
 DIANA M. ZOTTMAN

① ADMITTED IN ARIZONA
 ② ADMITTED IN CALIFORNIA
 ③ ALSO ADMITTED IN ARIZONA
 ④ ALSO ADMITTED IN CALIFORNIA
 ⑤ ALSO ADMITTED IN COLORADO
 ⑥ ALSO ADMITTED IN IDAHO
 ⑦ ALSO ADMITTED IN ILLINOIS
 ⑧ ALSO ADMITTED IN MARYLAND
 ⑨ ALSO ADMITTED IN MICHIGAN
 ⑩ ADMITTED IN NEW YORK
 ⑪ ALSO ADMITTED IN NEW YORK
 ⑫ ALSO ADMITTED IN OREGON
 ⑬ ALSO ADMITTED IN OHIO
 ⑭ ALSO ADMITTED IN TEXAS
 ⑮ ALSO ADMITTED IN WASHINGTON, D.C.
 ⑯ ALSO ADMITTED IN WISCONSIN
 ⑰ NOT ADMITTED IN WASHINGTON
 ⑱ OF COUNSEL

June 14, 2011

BY ECF

The Honorable George A. O'Toole, Jr.
 United States District Court
 John Joseph Moakley United States Courthouse
 One Courthouse Way, Suite 2300
 Boston, MA 0221

Re: *Federal Home Loan Bank of Boston v. Ally Financial Inc., et al.*
 Case Nos. 1:11-cv-10924-GAO and 1:11-cv-10952-GAO

Dear Judge O'Toole:

The letter this Court received today from the JP Morgan Defendants flatly misrepresents the Complaint that the Federal Home Loan Bank of Boston ("Bank") filed in the Superior Court of Massachusetts. It also levels accusations at the Bank that are unfounded, and perhaps better directed at the JP Morgan Defendants themselves. In light of the JP Morgan Defendants' misstatements, the Bank respectfully requests permission to submit this brief response.

The JP Morgan Defendants contend that the Bank asserts claims against the Lehman Defendants that are transactionally distinct from the claims against the remaining defendants, but this is not the case. Much of the Bank's Complaint is devoted to allegations and counts against the credit rating agencies—Fitch, Inc., the Moody's Defendants, and the Standard & Poor's Defendants—that assigned ratings to the securities at issue in this case. *See* Compl. ¶¶ 4, 7-8, 13(c), 132-36, 182-87, 643-95, 772-77, 843-82. The Moody's and Standard & Poor's Defendants, which joined in the JP Morgan Defendants' but not the Lehman Defendants' removal, rated the four securities that the Lehman Defendants cite in their removal papers.¹ The claims involving the purchase of those four securities—claims asserted against *both* the Lehman

¹ *See id.* ¶ 844 at 349; *see also* Case No. 11-10924, Notice of Removal (Dkt. 1) ¶ 3 (listing Lehman securities); Case No. 11-10952, Dkt. Nos. 5 and 49 (Notices of Consent in JP Morgan Defendants' removal filed by Standard & Poor's, and Moody's). The Fitch, Moody's, and Standard & Poor's Defendants also rated the remaining 111 PLMBS at issue in the Action. *See, e.g.,* Compl. ¶ 777.

The Honorable George A. O'Toole, Jr.
June 14, 2011
Page 2

Defendants *and* against the Moody's and Standard & Poor's Defendants—unquestionably have a transactional unity. Fed. R. Civ. P. 20(a)(2)(A). Further, the allegations against the credit rating agencies involve the abandonment of underwriting guidelines by originators, *e.g.*, Compl. ¶¶ 645-51, an issue that will also be important to the Bank's claims against the Lehman Defendants, *id.* ¶¶ 717-28. Fed. R. Civ. P. 20(a)(2)(B). The Bank's claims against the Lehman Defendants cannot be severed from the rest of the case.


The JP Morgan Defendants also boldly accuse the Bank of trying “unilaterally”—presumably they mean “extrajudicially”—to consolidate what are now two separate actions. The parties who have acted without the sanction of a court order, however, are the JP Morgan Defendants, who commenced a separate action in federal court rather than filing their removal papers under the already existing docket created by the Lehman Defendants. This kind of severance-by-removal is illegitimate. If the JP Morgan Defendants wish to sever, the Rules create a procedure for them to do so: they may move to sever. *See* Fed. R. Civ. P. 21. A party cannot use 28 U.S.C. § 1452, the bankruptcy removal statute, to circumvent Rule 21.

If state court defendants could use § 1452 to sever themselves from a multi-defendant action, chaos would be the result. Defendants would then be allowed to take a unitary state court action and create dozens of identical federal cases simply by removal. Here, for example, the Defendants could create ninety identical federal cases without having to demonstrate misjoinder. Such a result would do little to promote comity between federal and state courts, and even less to advance judicial efficiency.

Plaintiff is prepared to file a single Motion to Remand once it is given leave.² The motion will explain why this Court lacks subject matter jurisdiction over this action, and request remand of the Bank's single action to state court.

In the meantime, Plaintiff asks this Court to take Defendants' assertions about this case—and about the applicable law—with a grain of salt.

Respectfully submitted,


Lynn Lincoln Sarko

cc: All Counsel of Record in Case No. 10952 (via ECF)
All Counsel of Record in Case No. 10924 (via US Mail)

² Plaintiff's Unopposed Motion for Leave to File Memorandum in Support of Motion to Remand in Excess of Page Limit was submitted via ECF on June 10, 2011. *See* Case No. 10924, Dkt. 21; Case No. 10952, Dkt. 98. As reiterated in the JP Morgan Defendants' letter, the Motion is unopposed.